

International Terrorism and Human Rights

Terrorism has posed a threat to humans, and their lives and rights for centuries; however, it started gaining attention in the 19th century, as it became quite a widespread means of reaching political goals first of anarchists and later other groups. Every generation has claimed ‘their terrorism’ to be a completely new sort of terrorism never seen before, but all this has been more about perception rather than real change of the situation. One such new era allegedly started with the terrorist attacks on the WTA and the Pentagon in the USA on 11 September 2001.

It is arguable whether that terrorism is a new one, but the response was definitely harsher than before, because this time reaction to one event engulfed the whole world. The attack was certainly bigger than usual, that much must be admitted, and it targeted symbols of a nation that had been endangered on its soil in such a way just once before, a superpower whose vulnerability was suddenly revealed. The people all around the world got scared and politicians reached to strong means of fighting the threat and protecting their people, sometimes resorting to controversial or blatantly unlawful ways, occasionally clearly exploiting the situation.

International law – general, humanitarian, criminal and mainly human rights law – has been one of the victims of terrorism and the subsequent fight against it. Since the creation of today’s human rights protection system after the WWII, there have always been clashes between the law pertaining to human rights and the means used in the fight against terrorism. Since 2001 the clashes have grown much bigger or at least much more visible, and human rights have suffered a lot. Even if this claim were based on nothing more than a feeling similar to the one about terrorism being different and more and more dangerous and ever-present in every generation, as mentioned above, the issue of appeasing human rights and their protection on the one hand and fight against terrorism on the other is certainly a very important one and also very necessary, concerning the role the human rights have played in democracy and our civilisation.

This master thesis starts with a brief overview of history of terrorism and its motives, and current legal means of fighting terrorism. It continues by pointing out problems pertaining to definition of terrorism and discusses the main characteristics of terrorism any definition should contain. Unfortunately, the international law does still

not contain any general treaty on fighting terrorism, as the international community has been unable to agree on a definition of terrorism, which certainly is a basic element of any eventual international treaty aiming at fighting terrorism. Thus we still have to rely on treaties dealing only with certain parts of the whole terrorism problem.

The main part of the thesis naturally focuses on human rights issues. Concerning today's situation and the matters connected to terrorism mainly since 2001, it first deals with human rights and their protection during both international and non-international armed conflicts and then with human rights during peace situation.

One of the main points in protection of human rights in war is deciding what status a person in the conflict has, as the humanitarian law recognises the status of combatant and status of civilian. Specific rights and obligations are attached to each of the statuses. However, there is what experts call the revolving door phenomenon in the humanitarian law, which pertains to the situations when civilians breach one of the main obligations they have in an armed conflict, i.e. they restore to violence, which is the case of terrorism, when it is committed by civilians in war. The part of the thesis on human rights in armed conflicts tackles the problem.

As terrorism is not only the problem of war, but definitely also the problem of peace times, in its fifth part the thesis focuses on protection of human rights outside of war. A big issue therein is the absolute nature of the ban on torture and cruel, inhuman or degrading treatment or punishment. Many are of the opinion that when it comes to terrorism and terrorists, the ban should be at least limited, as they believe that using torture or cruel, inhuman or degrading treatment or punishment could make terrorists talk and provide information vital for saving human lives. However, ban on torture and cruel, inhuman or degrading treatment or punishment is an essential one in protection of human rights and the respective chapter endeavours to show, why the ban should definitely not be limited or completely dropped even just in relation to certain categories of people. The part of the thesis in question also analyses other human rights pertaining to judicial proceedings and the possibilities of their limitations generally and in connection with terrorism.

The thesis also includes a case study on the detention camp in the Guantanamo Bay, Cuba, especially in respect of the above-mentioned rights and freedoms.

Finding a balance between the rule of law, protection of human rights and observation of laws on the one hand and requirements of fighting terrorism and security on the other is a very difficult matter, but one that must be dealt with. Adherence to laws and high legal standards of democracy is not always the easiest way of destroying or at least lessening the threat of terrorism, but in the long term it is probably the most effective one, as today's terrorism mostly attacks exactly the values we are sacrificing in order to combat it, thus not only helping terrorism to reach its aim, but also enraging lots of people who then are more likely to join terrorist groups or at least support terrorism. Moreover, rule of law in general and human rights and their protection in particular form the basis of our value system that has been developing through decades and centuries and should not be sacrificed at all, let alone that easily as we have often witnessed in the last eight years.

Key words:

- international terrorism
- protection of human rights
- humanitarian law
- criminal law
- Guantanamo